

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-596

**New York City Economic Development Corporation – Adverse Abandonment – New
York Cross Harbor Railroad, Inc., in New York, NY**

BACKGROUND

This proceeding involves an application for adverse abandonment filed by New York City Economic Development Corporation (NYCEDC), acting on behalf of the City of New York, NY (City) under 49 CFR 1152. The New York Cross Harbor Railroad Inc. (NYCH) currently operates a rail and marine service that uses rail tracks and terminal facilities owned by the City in Brooklyn, Kings County, New York. NYCEDC seeks abandonment and discontinuance of service of the railroad tracks and terminal facilities at the “Bush Terminal Yards” (a/k/a “First Avenue Yards”) and the floatbridge and related tracks at the Harborside Industrial Center (a/k/a “Brooklyn Army Terminal”) (collectively the tracks and facilities).

An adverse abandonment is a proceeding where a party other than one who is the owner or operator of the line comes before the Surface Transportation Board (Board) to request that the Board withdraw its jurisdiction over the line and require or permit abandonment of the line by issuing an abandonment certificate. This agency and its predecessor, the Interstate Commerce Commission (ICC) have long held that granting an adverse abandonment application would remove this agency’s primary jurisdiction over the line, thereby subjecting the line to actions under state law.¹

NYCH uses the tracks and facilities to transport rail freight cars across New York Harbor by carfloats between Brooklyn, New York and the Greenville Yard in New Jersey. According to NYCEDC, the floatbridge “is a stationary facility similar to a dock, which permits the transport of rail cars onto the carfloats, which are similar to barges, which transport the cars across the water with the assistance of tugboats. There are also connections to tracks on city streets that must be used between the floatbridge and the terminal.”

NYCEDC claims that NYCH’s continued use of the tracks and facilities would not serve the public interest. According to NYCEDC, NYCH has not complied with the City’s building codes and statutory and financial requirements. NYCEDC also states that the City is currently suing NYCH to recover the costs of removing hazardous materials that had been “illegally

¹ See Modern Handcraft, Inc. - Abandonment, 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frgt. Operations Exempt. - Aban., 7 I.C.C. 2d 216, 224-26 (1990); and Chelsea Property Owners - Aban. - The Consol. R. Corp., 8 I.C.C. 2d 773, 778 (1992), aff’d sub nom. Conrail v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

disposed of by NYCH at the site.” A map depicting the rail line in relationship to the area served is appended to this report. If the Board approves the application for adverse abandonment, NYCEDC will be able to salvage track, ties and other railroad appurtenances, and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to NYCEDC, the area of the proposed abandonment is about 12 acres, and is immediately west of First Avenue between 43rd Street and 51st Street.

The tracks and facilities transport cocoa beans and other food, lumber and plywood, plastic pellets, and paper products, according to information obtained by NYCEDC. NYCEDC states that NYCH could transfer its operations to another nearby facility, pursuant to an agreement with the operator of that facility, and thus would be able to continue transporting goods across New York Harbor. Currently, after the rail cars cross New York Harbor from New Jersey, they move from the floatbridge to tracks at the 51st Street Yard. NYCEDC states that NYCH could transfer its operations to the 65th Street Rail Yard.

ENVIRONMENTAL REVIEW

NYCEDC has submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. NYCEDC has served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules at 49 CFR 1105.7(b). We have investigated and reviewed the record in this proceeding.

The New York Department of State, Division of Coastal Resources, has submitted comments stating that the proposed abandonment would need to be reviewed for consistency with the New York State Coastal Management Program. We will recommend such a condition.

NYCEDC states that the Brooklyn Army Terminal (a/k/a the United States Army Military Terminal, Brooklyn Army Base, New York Port of Embarkation) is in the area of the proposed abandonment, and has been listed on the National Register of Historic Places Inventory. The New York Historic Preservation Field Services Bureau has indicated that it needs additional time to evaluate the proposed abandonment. We will recommend such a condition.

CONDITIONS

We recommend that the following environmental condition be imposed on any decision granting abandonment authority:

- 1. Prior to any salvage or abandonment activities, New York City Economic Development Corporation (NYCEDC) shall consult with the New York Department of State, Division of Coastal Resources, to determine whether New York State Coastal Management consistency certification is required. If consistency certification is required, NYCEDC shall be prohibited from performing any salvage**

or abandonment activities until it obtains consistency certification and shall then notify the Surface Transportation Board.

- 2. New York City Economic Development Corporation shall take no steps to alter the historic integrity of the line and all sites and structures on the line until the completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.**

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the tracks and facilities will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed adverse abandonment would include denial (and therefore no change in operations) and discontinuance of service without abandonment. In any of these cases, the existing quality of the human environment and energy consumption should not be affected. NYCEDC states in its application that “it is expected the site will continue to be used for rail purposes, particularly to interface with the planned re-development and expansion of adjacent maritime terminals to further promote water-to-rail movement of cargo and economic revitalization of the Brooklyn waterfront.” Therefore, it appears that use of the property for other public use or trail use following abandonment may not be suitable.

PUBLIC ASSISTANCE

The Board's Office of Public Services responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact the Office of Public Services directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to Vernon A. Williams, Office of the Secretary, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment. **Please refer to Docket No. AB-596 in all correspondence addressed to the Board.** If you have questions regarding this environmental assessment, you should contact Rini Ghosh, the environmental contact for this case by phone at (202) 565-1539, fax at (202) 565-9000, or e-mail at ghoshr@stb.dot.gov.

Recent events involving a principal postal facility within Washington, D.C., may affect for a period of time the receipt of materials mailed to the Board, as well as customer receipt of reply mail sent from the Board. Until the timely delivery of mail has been reestablished, the Section of Environmental Analysis (SEA) requests that individuals filing comments regarding

this or other environmental assessments take the following additional steps to ensure receipt of their correspondence during the comment period:

1. Telephone or e-mail the environmental contact indicated above prior to the close of the comment period and inform them that you have mailed a comment.
2. If the comment has not been received, the environmental contact will discuss alternative modes of delivery.
3. Retain a copy of your comment for your records should alternative modes of delivery need be necessary.

SEA is committed to carrying out its duties to the public and regrets any inconvenience these new procedures may cause.

Date made available to the public: **January 4, 2002**

Comment due date: February 1, 2002 (30 Days)

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

MAP NEEDS TO BE SCANNED.